

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

S4 07 Cr. 387 (CM)

PLUTARCO ANGULO-AGUIRRE,
RAFAEL RODRIGUEZ, ANGEL DIAZ,
VICTOR DIAZ and JORGE CEDENO,

Defendants.

x

DECISION AND ORDER ON ANGULO-AGUIRRE'S MOTION TO PRECLUDE THE GOVERNMENT FROM INTRODUCING EVIDENCE OF PRIOR CONVICTIONS

McMahon, J.:

The Court has decided all *in limine* motions, except Angulo-Aguirre's motion to preclude the Government from introducing evidence about two of defendant's prior convictions: (1) A 1995 arrest for burglary of a Federal Express Truck and (2) a 1997 arrest for grand larceny in connection with a Federal Express van. The Government argues that these prior convictions are directly relevant to show that Angulo-Aguirre had the requisite knowledge, intent, and opportunity to commit the charged crimes.

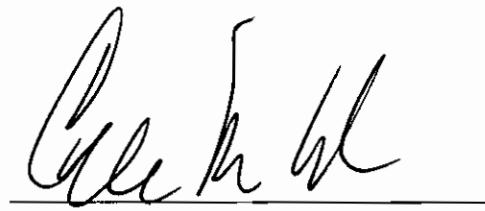
While arguably admissible under 404(b) to show requisite knowledge, intent, and opportunity to commit the charged crimes, the value of the evidence of defendant's theft from trucks over a decade ago is substantially outweighed by danger that a jury will convict defendant of the present offenses on the forbidden ground of propensity. There is ample 404(b) evidence directly related to the alleged conspiracy to allow the Government to argue knowledge and intent, and no inference of opportunity can be drawn from conduct that occurred ten or more years before the crimes charged

in the indictment. Therefore, the evidence will be excluded under Rule 403.

With respect to Angulo-Aguirre's opposition to the Government's introduction of these convictions as probative of truthfulness under Rule 609 if the defendant testifies, the Court has previously ruled that the Government will be precluded from attempting to impeach defendant's credibility with these convictions.

This constitutes the decision and order of the Court.

May 15, 2008

A handwritten signature in black ink, appearing to read "John W. [illegible]". The signature is fluid and cursive, with a horizontal line underneath it.

U.S.D.J.

BY FAX TO:

Nola Breglio Heller
U.S. Attorney's Office, White Plains
300 Quarropas Street
White Plains, NY 10601
Fax: (212) 637-2387

Samuel Braverman
Law Office Of Sam Braverman
901 Sheridan Avenue
Bronx, NY 10451
Fax: (718) 293-5395

Paul Peter Rinaldo
Grossman & Rinaldo
108-18 Queens Boulevard, 8th Floor
Forest Hills, NY 11375
Fax: (718) 793-0894

George Edward Fufidio, Jr.
Mancuso Rubin & Fufidio
1 North Broadway
White Plains, NY 10601
Fax: (914)-686-3478

Michael Kennedy Burke
Burke, Miele & Golden, LLP
100 Washington Avenue, Post Office Box 397
Suffern, NY 10901
Fax: (845) 294-7673

Clinton Warren Calhoun
Briccetti, Calhoun and Lawrence
81 Main Street
White Plains, NY 10601
Fax: 914-946-5906